IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5740 OF 1988

Vidyachandra Raoji Mehta, since deceased by his heirs and legal representatives:

1. Shri Shirish Vidyachandra Mehta, son, aged 50 years, R/o. 413, East Mangalwar Peth, Solapur.

2. Shri Bahubali Vidyachandra Mehta, aged 43 years, R/o. 413, East Mangalwar Peth, Solapur—4 13 002.

3. Smt.Bakulabai Vidyachandra Mehta, widow, aged 69 years, R/o. 413, East Mangalwar Peth, Solapur—413 002.

4. Mrs.Rohini Shreekant Doshi, aged 46 years, Daughter, R/o. “Avinash”, Modi Bag, Shivajinagar, Pune—1 6.

5. Miss Tanuja V. Mehta, aged 36 years, daughter, R/o. 413, East Mangalwar Peth, Solapur—413 002. : Petitioners

V/s.

1. Dy. Collector and Competent Authority, Solapur, Urban Agglomeration, Solapur.

2. Collector, Solapur, Acting as an Appellate Authority under sec. 33 of the Urban Land (Ceiling and Regulation) Act,

1976.

3. Smt.Lalitabai Prakashchandra Mehta,
age 69 years, 160, Railway Line,
Solapur
(Name of R. No.3 deleted as per Court' s
order dated 3.11.2003).

4. Shri Sureshchandra Prakashchandra Mehta,
age 50, 160, Railway Line, Solapur.

5. Shri Subhashchandra Prakashchandra Mehta,
age 48, 160, Railway Line, Solapur.

6. Smt. Sujata Prakashchandra Mehta,
age 42, 160, Railway Line, Solapur.

7. Shirish Vidyachandra Mehta,
age 40, 413, East Mangalwar Peth,
Solapur.

8. Bahubali Vidyachandra Mehta, age 33,
413, East Mangalwar Peth,
Solapur.

9. Sou. Gajarabai Manikchand Shah, age 68,
Ghongade Galli, Tambada Maruti,
Pandharpur, Dist. Solapur.

10. Sou. Kantabai Arvind Shah, age 60,
Krishna Kripa, Bhavani Peth,
Solapur.

11. State of Maharashtra. : Respondents

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Mr.N.V.Walawalkar for the petitioners.

Mr.V.P.Malvankar, Asstt. Govt. Pleader for respondent Nos.1, 2 & 11.

Mr.G.S.Godbole for respondent Nos.4, 5 & 6.

Shri A.M. Desai for respondent Nos.7 to 10.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

January 27, 2005.

ORAL JUDGEMENT (Per Bobde,J.)

1. The petitioner has challenged the order dated 30.4.1988 of the Appellate Authority under the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the "Act", rejecting the petitioner's appeal. The Appellate Authority has upheld the order of the Deputy Collector and Competent Authority by which the Competent Authority declared various properties of the petitioner as vacant and in excess of the ceiling area prescribed by the Act. The main contention before the authorities under the Act was that a civil suit for partition of the properties, being Civil Suit No.172 of 1975 was pending in the Court of Civil Judge, Senior Division, Solapur, between them and respondent Nos.3 to 6 herein. According to the petitioner, the properties which

are the subject-matter of the civil suit are also the subject-matter of the proceedings under the Act. The contention before the Civil Court was that all the properties mentioned in the suit filed by the father of respondent Nos.3 to 6 were not the only joint family properties but that certain joint family properties had been deliberately omitted. According to the petitioner, the fact of the pendency of the civil suit ought to have been taken into account, since the decision of properties would have a bearing on the alleged excess land held by them.

2. Before us, it is stated by the learned counsel for the petitioners and the learned counsel for respondent Nos.4 to 6 that the civil suit has been decided on 13.2.1991 and this has a bearing on the extent of the vacant land. There is no dispute that the civil suit has been decided and the decree of the Civil Court cannot be ignored. What effect it would have, is something which is not necessary for this Court to pronounce on.

3. We, however, find that the Appellate Authority has

rejected the above contention of the petitioner because the civil suit was merely pending and was not decided. In any case, we are of view that it should be taken into account now.

4. The next contention of the learned counsel for the petitioners is that the Appellate Authority has wrongly taken into account the Zonal Plan of 1972 as if it were a Master Plan. This, according to the learned counsel, has a bearing on the extent of the vacant land allegedly held by the petitioner. We find that in regard to this very city of Solapur from which the present matter arises, the Zonal Plan of 1972 has been held as not capable of being equated as a Master Plan vide judgement of a Division Bench of this Court in Udhav Tatya Bhopale v. State of Maharashtra & Ors. (1992 Mh.L.J. 1432). For this reason also, it appears that the authorities under the Act should be required to consider the matter afresh.

5. Lastly, the learned counsel for the petitioners submitted that the authorities have not applied the concept of “land

appurtenant" in accordance with the decision of the Supreme Court in State of U.P. v. L.J. Johnson (1984 Mh.L.J. 76).

6. In this view of the matter, without expressing any opinion on the merits of the matter, we hereby quash and set aside the impugned order and remand the matter for a fresh decision, in accordance with law, and on the points stated above. The authorities shall decide the matter as expeditiously as possible.

7. The rule is made absolute in the above terms. No order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.